# BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA



Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company and San Diego Gas and Electric Company Associated with the San Onofre Nuclear Generating Station Units 2 and 3.

Investigation 12-10-013 (Filed October 25, 2012)

And Related Matters.

Application 13-01-016 Application 13-03-005 Application 13-03-013 Application 13-03-014

JOINT MOTION OF RUTH HENRICKS AND CITIZENS OVERSIGHT, INC. TO STAY THE 22 MARCH 2018 RULINGS
(1) GRANTING PARTY STATUS TO PUBLIC WATCHDOGS; AND
(2) REQUIRING HENRICKS AND CITIZENS OVERSIGHT, INC. TO FILE DOCUMENTS UNDER THE THREAT OF EXCESSIVE FINES PENDING THE DECISION ON THE AMENDED APPEAL OF THOSE RULINGS

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3 April 2018

# BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California

Public Utilities Commission, Ruth Henricks and Citizens Oversight, Inc. dba Coalition to

Decommission San Onofre (collectively, the "Joint Parties") respectfully submit this

Joint Motion to Stay the implementation of the two 22 March 2018 Assigned

Commissioner and ALJ Rulings in Proceedings in I.12-10-013 (the "Joint Motion to

Stay") pending the Commission's consideration of the "Amended Appeal of the 22

March 2018 Rulings: (1) Granting Party Status to Public Watchdogs on an Issue of

Which the Commission Lacks Jurisdiction; and (2) Requiring Henricks and Citizens

Oversight, Inc. to File Documents Under the Threat of Excessive Fines" submitted to the

Commission through its docket filing system on 29 March 2018. (As of this filing, the

CPUC has not yet publicly posted the Amended Appeal, a copy of which is attached

hereto, on the CPUC docket in this I.12-10-013 proceeding.<sup>1</sup>)

Henricks and Citizens Oversight are not seeking a stay of all activities in this I.12-

10-013 proceeding, but rather, only the two narrow rulings issued on 22 March 2018 that

are the subject of the appeal as relates to (1) Henricks and Citizens Oversight, and (2) the

allowance of Public Watchdogs as a party on the issue of an agreement between parties in

a Federal Court Action, not under the jurisdiction of the CPUC.

The Joint Parties respectfully request a ruling on this Joint Motion to Stay

expeditiously.

Respectfully Submitted,

Dated: 3 April 2018

By: /s/ Maria C. Severson

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<sup>1</sup> This failure to publicly post the filing on the CPUC docket will be brought to the attention of the United States Court of Appeals for the Ninth Circuit.

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# **ATTACHMENT "A"**

### BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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WHICH THE COMMISSION LACKS JURISDICTION; AND
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DOCUMENTS UNDER THE THREAT OF EXCESSIVE FINES

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# BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company and San Diego Gas and Electric Company Associated with the San Onofre Nuclear Generating Station Units 2 and 3.

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DOCUMENTS UNDER THE THREAT OF EXCESSIVE FINES

### **INTRODUCTION**

Petitioners file this appeal of two unlawful and erroneous rulings. First, the Joint Ruling of Assigned Commissioner and Administrative Law Judge on March 22, 2018, improperly allowed a party to intervene in proceedings that commenced over five years ago, is unlawful and retaliatory. The decision allowing a party to intervene at this late stage is evidence of abuse of power and retaliation against two parties who brought legal

action against the CPUC in federal court after a denial of due process in the instant CPUC proceeding. The CPUC denied other parties seeking party status for failure to intervene in a timely manner. The CPUC decision allowing Public Watchdogs to be a party is not to to determine the fairness of the settlement, but rather, a thinly veiled attempt to attack an issue not before the CPUC. There is no legal authority for the CPUC to allow a challenge to an agreement in which neither the CPUC nor Public Watchdogs are parties. Further, the proceedings are currently pending in federal court, where the CPUC has no jurisdictional authority. Citizens Oversight and Henricks are but two of eight plaintiffs in the federal proceeding; all eight signed a settlement agreement not subject to the CPUC's approval. Six of the eight federal action plaintiffs are not parties in the CPUC proceeding. The CPUC's attempt to gain authority is retaliatory and wholly without authority.

Second, Petitioners appeal the Assigned Commissioner and Administrative Law Judge's separate ruling on March 22, 2018, requesting Petitioners provide additional information in the form of a declaration, and threatening that failure to comply would result in daily \$50,0000 violations Petitioners would be responsible to pay. Requiring Petitioners to provide a declaration is a pretext and is not needed to determine the reasonableness of the settlement. Southern California Edison ("SCE") filed the OII Revised settlement agreement and the federal agreement; and all other parties to the OII Revised Settlement Agreement advised the CPUC there are no other agreements. The order is thus not designed to evaluate the fairness of the settlement; the CPUC knows there is no agreement between the parties, so threatening sanctions against two parties that challenged the CPUC's authority is retaliatory and extortion.

Ms. Henricks operates a small neighborhood café (the Huddle) that serves breakfast and lunch to daily customers. One of the Huddle's daily customers was "Scott" who told Ms. Henricks, "If I'm not here, I'm not eating." Scott was sick with HIV/AIDS and was too weak to cook. In 1991, when Scott failed to show up for his usual breakfast one morning, The Huddle's owner, Ruth Henricks took action. She joined with a group of friends who volunteer their time to help her prepare meals in a room behind the Huddle's kitchen. They called the home-delivered meals Special Delivery. Today, with that back room (and a bit more space), Ms. Henricks and her team are able to serve hundreds of meals every day to the infirmed.

Threatening Ms. Henricks and Citizens Oversight—a non-profit—with \$50,000 per day penalties in order to obtain a declaration that the CPUC does not even need to make its decision is retaliatory and an unconscionable abuse of power. The ruling requires Petitioners to make a declaration stating they did not make any side deals in the proposed settlement. However, the declaration will not provide any information defendants Picker and Houck need under Rule 12. SCE, SDG&E, and all of the other parties have already told the defendants Picker and Houck there are no such agreements. Defendants Picker and Houck have not provided any legal authority for ordering two parties to provide declarations. Instead of addressing that issue, ALJ Houck's and Commissioner Picker's order claims but does not have legal authority to require a declaration under the threat of a \$50,000 fine per day. Under these circumstances, when the terms of the settlement have been made known, and when provisions of a settlement in federal court exist between parties not involved in the CPUC proceedings here, the

requirements of a declaration fails to disguise the CPUC's retaliatory and unlawful actions.

A. THE PRESIDING OFFICER IMPROPERLY GRANTED PUBLIC WATCHDOGS THE ABILITY TO INTERVENE AND RE-OPEN YEARS OF NEGOTIATIONS AND PROCEEDINGS.

1. The Presiding Officer improperly granted Public Watchdogs limited party status nearly five years after proceedings were initiated.

The decision to allow Public Watchdogs to intervene five years after the proceedings initiated is contrary to the CPUC's consistent practice and policies. Under the CPUC Rules of Practice and Procedure 1.4(c), an "Administrative Law Judge may, where circumstances warrant, deny party status or limit the degree to which a party may participate in the proceedings." Further, individuals or entities seeking "party status" are required to: "(1) fully disclose the persons or entities in whose behalf the filing, appearance or motion is made, and the interest of such persons or entities in the proceeding; and (2) state the factual and legal contentions that the person intends to make and show that the contentions will be reasonably pertinent to the issues already presented." However, the CPUC recognized in a recent ruling that it "has denied the right to intervene where a party joins very late in the proceedings, raises issues covered by other parties, or raises new issues."

<sup>&</sup>lt;sup>1</sup> *Id.* at Rule 1.4(b) (emphasis added).

<sup>&</sup>lt;sup>2</sup> Administrative Law Judge's Ruling Denying the Motion of the University of California for Party Status (Feb. 13, 2018) ("UC Ruling"), at 1 (citing Decision (D.) 08-11-031 n. 166, 2008 Cal. PUC LEXIS 571 (denying motion because party "did not participate earlier in the proceedings, and addresses issues amply covered by other commenters")).

In fact, the CPUC has regularly denied intervention where parties had ample opportunity to file a motion to intervene, but failed to do so.<sup>3</sup> For example, the CPUC refused to allow a party to intervene because at the end of the proceedings, an organization "announced its opposition to the settlement only as to a single issue - - the adoption of a sales forecast." The CPUC denied the request because the party could not come nearly a year after the proceedings initiated. Moreover, granting the request "would have unduly broadened the issues, which had previously been narrowed at the [prehearing conference]."

Similarly, in another CPUC proceeding, an organization's request to intervene was denied because "they had ample opportunity to intervene as parties, on a timely basis, but failed to do so." There, the CPUC explained although the organization may have a substantial and direct interest in the proceedings, the organization "fail[ed] to explain why they have waited until now to intervene, when they are unable to present and advocate their members' interests."

More egregiously, in the current proceedings the Commission has already denied two separate motions to grant intervenor status. First, nearly one year ago, an ALJ denied a motion for party status to AVP Arora International, Inc., explaining among other

<sup>&</sup>lt;sup>3</sup> See, e.g., San Diego Gas & Electric Company, D. 98-12-004, 1998 Cal. PUC LEXIS 876 ("D. 98-12-004"); Order Instituting Rulemaking to Promote Policy and Integration in Electric Utility Resource Planning, D. 06-06-071, 2006 Cal. PUC LEXIS 237 (denying party's motion to intervene because the two-year proceedings provided the party with "ample time and opportunity to intervene as a party on a timely basis," but failed to do so) ("D. 06-06-071"); Southern California Edison Company, D. 03-04-001, n. 18, 2003 Cal. PUC LEXIS 223 (denying party motions to intervene because it was untimely).

<sup>&</sup>lt;sup>4</sup> D. 98-12-004, 1998 Cal. PUC LEXIS 876.

<sup>&</sup>lt;sup>5</sup> *Ibid*.

<sup>&</sup>lt;sup>6</sup> Ibid.

<sup>&</sup>lt;sup>7</sup> Pacific Gas and Electric Company, D. 05-10-046, 2005 Cal. PUC LEXIS 486.

<sup>&</sup>lt;sup>8</sup> Ibid.

factors, its failure to seek party status at an earlier stage of the proceedings. More recently, on February 13, 2018, an ALJ denied the University of California's motion for party status because the UC did not intervene earlier. 10

Here, in the proceedings regarding Public Watchdogs' possible intervention, the Presiding Officer explained:

"Public Watchdogs has clearly been following this proceeding; therefore it has been fully aware that all of the Joint Parties were directed to participate in a meet and confer process since at least December of 2016 . . . Public Watchdogs chose not to seek party status until a new settlement was presented, and it also chose to rely on other parties to advocate its positions in the proceedings . . . [Public Watchdogs] reliance on the advocacy of other parties to present a case is not a sufficient basis to grant intervenor statutes at such a late day." <sup>11</sup>

Despite the Presiding Officer acknowledging that Public Watchdogs was aware of the entire proceedings and failed to participate in any of the proceedings, it then improperly granted Public Watchdogs limited party status to address the single issue of whether the settlement agreement undermined the CPUC's intervenor compensation program. First, and most egregious, this decision was wholly unlawful and merely a retaliatory attempt for the CPUC to challenge an agreement that is outside of its jurisdiction. The Presiding Officer is now attempting to use Public Watchdogs' limited party status to challenge a settlement that is entirely separate from the CPUC proceedings in retaliation against Petitioners and the other six plaintiffs in federal proceedings against the CPUC.

<sup>&</sup>lt;sup>9</sup> Administrative Law Judge's Ruling Denying the Motion of AVP Arora International, Inc. for Party Status (Apr. 17, 2017), at 2.

<sup>&</sup>lt;sup>10</sup> UC Ruling, at 3.

<sup>&</sup>lt;sup>11</sup> Joint Ruling of Assigned Commissioner and Administrative Law Judge Granting Limited Party Status to Public Watchdogs (Mar. 22, 109), at 4.

Second, the Presiding Officer's decision is erroneous because it is contrary to the CPUC's precedent and policy. The Presiding Officer has allowed Public Watchdogs to intervene in proceedings that initiated over five years ago and have included exhaustive settlement negotiations. After extensive work by all of parties in the proceedings, they were able to reach the 2018 Federal Settlement Agreement ("Settlement Agreement"). If the Presiding Officer's decision to grant Public Watchdogs a limited party status is upheld, it will create an undue burden on Petitioners and will undo the years of work put in by every party that chose to participate in the proceedings and settlement negotiations. Further, the Presiding Officer's decision creates a dangerous precedent for other parties to stay out of proceedings and intervene at the last minute.

# 2. The Presiding Officer improperly granted limited party status to challenge a Federal Settlement Agreement.

Public Watchdogs asserted its right to intervene based on seven grounds challenging the Settlement Agreement it is not party to. The Presiding Officer determined that Public Watchdogs were adequately represented in the proceedings regarding six of the seven challenges to the proceedings. However, the Presiding Officer granted Public Watchdogs limited party status to challenge the single issue of whether the Settlement Agreement undermined the CPUC's intervenor compensation program. This reasoning shows the Presiding Officer's decision was both erroneous and unlawful.

The CPUC's intervenor compensation program was created to assign "responsibility for payment of compensation awards in **quasi-legislative proceedings** . . . among all of the utility participants in the proceedings **but not those that do not** 

participate, even if they benefit from the outcome." This program is codified in California's Public Utilities Code section 1801, which provides, "The purpose of this article is to provide compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers of participation or intervention in any proceedings of the commission." Section 1801.3(f) further explains the program "shall be administered in a manner that avoids unproductive or **unnecessary participation** that duplicates the participation of similar interests otherwise adequately represented or participation that is not necessary for a fair determination of the proceeding."<sup>13</sup>

First, a provision awarding attorney fees in a federal settlement agreement would not affect the CPUC's intervenor compensation program because it is outside of the CPUC's jurisdiction, involves many plaintiffs who are not parties to this proceeding, and most disturbing, involves a case in which the CPUC is a party under the federal court's jurisdiction but not a party to the settlement agreement. Indeed, the CPUC ruling would improperly allow the CPUC to regulate a proceeding in which it is a party litigant. It cannot be both judge and party. In any event, the settlement agreement in federal court does not include any action on behalf of the CPUC. Thus, the federal settlement agreement in no way prevents parties who actually participated in the CPUC proceedings from requesting intervenor compensation.

Second, Public Watchdogs fails to provide any evidence that supports its assertion that the provision for attorneys fees was a direct payout "from [Southern California

Decision (D.) 98-04-059, 79 CPUC2d 628 (emphasis added).
 Pub. Util. Code § 1801.3(f) (emphasis added).

Edison] in exchange for settling the case out of court instead of disclosing the allegation of criminal activity in public hearings in a regulatory court . . . ."<sup>14</sup> Here, there is no evidence to support Public Watchdogs' assertion. In fact, the years of proceedings, countless negotiations, multiple legal strategies, and aggressive advocacy indicates the opposite: Petitioners and their counsel have dutifully defended the ratepayers. The issue of intervenor compensation is not at issue.

# B. The Presiding Officer's decision to require Petitioners provide a declaration is erroneous and unlawful.

The CPUC has asked for irrelevant and duplicative information from the parties in the proceedings. As a defendant in the pending federal litigation, the CPUC was served a copy and notified of the final federal Settlement Agreement. Additionally in this proceeding, SCE provided the agreement to the Court. How many duplicate ways must the CPUC demand the same document and same information already in its possession? Therefore, requesting Petitioners to provide information already in the possession of and record before the CPUC is nothing but an attempt to prolong the proceedings and control a federal settlement agreement it does not have jurisdiction over.

Is the CPUC more interested in retaliating against Petitioners because they dared challenge the Commission's conduct in this proceeding and in federal court? Indeed, it begs the question: Does the CPUC wish to delay the proceedings so that the ratepayers keep paying portions of the settlement that SCE and the parties agreed they need not pay?

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<sup>&</sup>lt;sup>14</sup> Motion for Party Status of Public Watchdogs (Feb. 28, 2018), at 6.

Petitioners addressed this issue in the objections they filed against the Joint Ruling of Assigned Commissioner and Administrative Law Judge, <sup>15</sup> Petitioners explained the changes of the agreement and provided factual and legal statements explaining the Settlement Agreement. This information, copies of the previous and present Settlement Agreements, as well as declarations from every other party explaining there are no other agreements, provides the CPUC with the ability to approve the OII Revised Settlement. Instead, the Presiding Officer explained the CPUC "required additional factual and legal information to assess the scope of the 2018 Settlement Agreement and to determine whether the 2018 Settlement Agreement meets the requirement of Rule 12.1(d)."

This information is neither relevant nor necessary to consider whether the OII Revised Settlement Agreement is consistent with Rule 12.1(d). The CPUC decision is not only erroneous and unlawful, but shows the CPUC is willing to exert its power to intimidate two non-profit organizations by threatening at a potential risk of \$50,000 fines daily.

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<sup>&</sup>lt;sup>15</sup> Ruth Henricks' and Coalition to Decommission San Onofre's Response in Objection to Joint Ruling of Assigned Commissioner and Administrative Law Judge Filed 5 February 2018 (Feb. 16, 2018), at 2–3.

<sup>&</sup>lt;sup>16</sup> Assigned Commissioner and Administrative Law Judge's Ruling on Party Filings Submitted on February 15, 2018 and Additional Information to be Provided by Parties (Mar. 22, 2018), at 9 ("Declaration Ruling"). Rule 12.1(d) reads in full, "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest."

### **CONCLUSION**

In this appeal to the Commission, each Commissioner must decide where they stand on the issues set forth herein. This appeal gives the CPUC an opportunity to correct the rulings. Petitioners request it do so.

Respectfully Submitted,

Dated: 29 March 2018 By: /s/Maria C. Severson

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### THE PUBLIC UTILITIES COMMISSION

### OF THE STATE OF CALIFORNIA

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I.12-10-013 (Filed October 25, 2012)

And Related Matters.

Application 13-01-016 Application 13-03-005 Application 13-03-013 Application 13-03-014

### **CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true and correct copy of the foregoing RUTH HENRICKS AND CITIZENS' OVERSIGHT, INC.'S AMENDED APPEAL OF THE 22 MARCH 2018 RULINGS: (1) GRANTING PARTY STATUS TO PUBLIC WATCHDOGS ON AN ISSUE OF WHICH THE COMMISSION LACKS JURISDICTION; AND (2) REQUIRING HENRICKS AND CITIZENS OVERSIGHT, INC. TO FILE DOCUMENTS UNDER THE THREAT OF EXCESSIVE FINES to each party named in the official service list for proceedings I.12-10-013, and the related matters, by electronic mail or first class mail.

Dated this 29th day of March, 2018, at San Diego, California.

/s/ Maria E. Byrnes
Maria E. Byrnes

### CALIFORNIA PUBLIC UTILITIES COMMISSION **Service Lists**

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